

AGREEMENT  
BETWEEN CITY OF MILPITAS AND SOUTH BAY MOA  
FOR 2005-2006 SOFTBALL OFFICIALS

THIS AGREEMENT is made by and between the CITY OF MILPITAS, a municipal corporation of the State of California, 455 East Calaveras Boulevard, Milpitas, California (hereinafter referred to as "CITY") and South Bay MOA, P. O. Box 390513, Mountain View, CA 94039-0513 (hereinafter referred to as "CONSULTANT").

**RECITALS**

- A. CITY requires certain professional services to provide officials for softball games.
- B. CONSULTANT is qualified to perform these services and is willing to furnish them in accordance with the terms and conditions of this Agreement.

IN CONSIDERATION of the mutual covenants and conditions herein contained, the parties agree as follows:

**AGREEMENT**

1. **General**

CITY engages CONSULTANT to perform consulting services pursuant to the covenants and conditions of this Agreement, at the compensation herein stipulated, and CONSULTANT accepts the engagement upon these terms.

2. **Term**

This Agreement shall become effective upon the execution of the Agreement by all parties. This Agreement shall terminate on June 30, 2006, unless otherwise terminated or extended pursuant to this Agreement.

3. **Scope of CONSULTANT's Duties and Services**

The scope of CONSULTANT's duties and services is set out in Exhibit A, which is attached and incorporated by reference. These duties and services shall be completed according to the time schedule contained in Exhibit A.

4. **Payment by CITY: Time and Manner of Payment**

CITY shall pay CONSULTANT for all services to be rendered by it and all materials to be furnished under this Agreement, the amount specifically set forth and in the manner specifically set forth on Exhibit B, which is attached and incorporated by reference. CONSULTANT agrees to accept this sum as full compensation for all services due under this Agreement. CITY's representative shall be responsible for obtaining a purchase order from the CITY's Finance Department to encumber the funds for Agreement.

5. **Professional Skill**

It is mutually agreed by the parties that CITY is relying upon the professional skill of CONSULTANT and CONSULTANT represents to CITY that its work shall conform to generally recognized professional standards in the industry. Acceptance of CONSULTANT's work by CITY does not operate as a release of CONSULTANT's representations.

6. **Equal Employment Opportunity**

CONSULTANT shall not discriminate against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or by illegal denial of family care leave.

7. Compliance with Laws

CONSULTANT shall comply with all current federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any court or administrative body or tribunal in any manner affecting the performance of the Agreement.

8. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY.

9. Indemnity

To the fullest extent permitted by law, CONSULTANT agrees to indemnify, defend with counsel reasonably acceptable to CITY, and hold harmless CITY, its officers and employees from all costs, expenses, claims, suits, judgments, demands, causes of action, losses, liabilities or damages arising out of or in any way connected with the intentional or negligent act or omission of the CONSULTANT, CONSULTANT's officers, employees, agents, contractors, subcontractors or any officer, agent or employee thereof, including without limitation those relating to injury or death of any person or damage to any property.

10. Insurance

a. General Liability

CONSULTANT agrees to maintain and pay for a general liability policy naming CITY, its officers, and employees as additional insureds and insuring them against liability or financial loss resulting from injuries occurring to persons or property in or about or in connection with the work to be performed under this Agreement. Each policy of insurance shall provide primary coverage on an occurrence basis in a company satisfactory to CITY in the following minimal amounts: personal injury, \$1,000,000 for each person and \$1,000,000 per occurrence; property damage, \$500,000 per occurrence. Each policy shall provide that it shall not be canceled or reduced in coverage without 30 days prior written notice to CITY. The general liability policy shall provide (a) if CITY, its officers or employees have other insurance against loss covered by said policy, said other insurance shall be excess insurance only, and (b) that CITY, its officers and employees are not precluded from claim under said policy against other insured parties.

b. Worker's Compensation

CONSULTANT agrees to comply with all State requirements relating to Worker's Compensation Insurance and to provide the same for its employees.

c. CONSULTANT shall file Certificates and Endorsements of Insurance with CITY in a form satisfactory to CITY ATTORNEY upon execution of this Agreement, evidencing said coverage and the requirements of this paragraph. The Certificates and Endorsement shall contain a reference to the date and title of this Agreement.

All of the insurance companies providing insurance for CONSULTANT shall have an A.M. Best & Co. rating of A: VIII or above. The Certificates and Endorsements shall be mailed to:

City Clerk  
City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

11. CITY Representative

Aaron Bueno shall represent CITY in all matters pertaining to the services to be rendered under this Agreement; all requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

12. CONSULTANT Representative

Don Lau shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

13. Notices

Unless otherwise provided herein, all notices required hereunder shall be given by United States registered or certified mail, or other form of mail which offers proof of mailing, postage prepaid and addressed to the party at the address below.

CITY: City Manager  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

CONSULTANT: Don Lau  
P. O. Box 390513  
Mountain View, CA 94039-0513

14. Assignment

Neither party shall assign nor sublet any portion of this Agreement without the written consent of the other party.

15. Applicable Laws and Attorneys' Fees

This Agreement shall be interpreted and enforced pursuant to California law. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in Santa Clara County, California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be affixed by the court.

16. Termination

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall also have the right to terminate this Agreement for any reason upon written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate, unless otherwise stated on Exhibit B.

17. Entire Agreement; Amendment

This writing constitutes the entire Agreement between the parties. No modification shall be effective unless the modification is in writing and signed by all parties to this Agreement.

18. Miscellaneous

All covenants herein shall be conditions. Time shall be of the essence. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. The singular number shall include the plural, and the masculine gender shall include the feminine gender and neuter gender whenever the context of this Agreement permits. This Agreement shall be deemed to have been drafted equally by both parties.

Dated: 9/17/05

CITY OF MILPITAS

BY:

Charlie Lawson  
Charlie Lawson  
City Manager

ATTEST

BY: \_\_\_\_\_

CITY CLERK

APPROVED AS TO CONTENT

BY:

Bonnie Greiner  
Bonnie Greiner, Recreation Services Manager

APPROVED AS TO FORM

BY:

Steve Mattes  
for CITY ATTORNEY

CONSULTANT

Date: 8/15/05

BY:

Don Lan

Date: \_\_\_\_\_

BY: \_\_\_\_\_

Exhibit A: Scope of Consultant's Duties and Services  
Exhibit B: Compensation Manner and Amount

**EXHIBIT A**  
(SCOPE OF CONSULTANT'S DUTIES AND SERVICES)

CONTRACTOR shall provide officials for City of Milpitas recreational softball leagues.

CONTRACTOR shall schedule officials according to the league schedules provided by the City's League Director.

CONTRACTOR shall provide two (2) officials for each game.

CONTRACTOR shall require all officials to wear the official's uniform.

**EXHIBIT B**  
(COMPENSATION MANNER AND AMOUNT)

Payment will be made per invoice billed each month to the City of Milpitas.

CONTRACTOR shall compute payment based on *number of umpires officiating number of games each month.*

CONTRACTOR shall base rates on the following rates:

2 Officials	\$40.00	per game
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CONTRACTOR shall not exceed \$25,000 per one fiscal year.